IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 482 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO No

2. To be referred to the Reporter or not? No :

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO No

5. Whether it is to be circulated to the Civil Judge? No :

SURENDRANAGR DIST PANCHAYAT

Versus

MOHBATKHAN REHMANKHAN

Appearance:

MR HS MUNSHAW for Petitioner

MRS DT SHAH for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 17/08/1999

ORAL JUDGEMENT

1. The petitioner has challenged the Award dated 18.12.1993 passed by the Labour Court, Surendranager in Reference LCS No.377/90, Annexure : C to the writ petition, and has prayed that the said Award be quashed.

2. Brief facts giving rise to this petition are as under :

The respondent, according to his statement of claim, was serving with the petitioner as Labourer for one year on daily-wage basis and was receiving Rs.17.05 ps. per day. On 21.9.1987 he was dismissed from service orally without any fault and without paying any compensation or money due to him. The respondent was dismissed from service whereas persons junior to him were not touched. On 15.8.1988 he made request to the petitioner to reinstate him in service and to pay backwages, but it was not considered. Accordingly industrial dispute was raised and the matter was referred to the Labour Court.

3. The stand of the petitioner before the Labour Court was that the respondent was employed as daily-wager and worked only for 75 days from 21.7.1987 to 20.10.1987. Thereafter he was not dismissed rather he willingly stopped attending the work. Written undertaking was also taken from the respondent that he was appointed on purely temporary basis with no right or interest in future. It was also the stand of the petitioner that in view of restriction imposed by the Government of Gujarat for recruitment of new daily-wagers the respondent could not be reinstated in service.

4. The Labour Court in a confused Award full of factual mistakes regarding dates, computing 75 working days to the credit of the respondent and further full of repetitions gave a confused finding in the nature of presumptive finding that the respondent has completed continuous service for a period of one year and his termination was illegal and violative of Section 25(F) of the Industrial Disputes Act. It also awarded 40 % backwages at the rate of last drawn salary payable from 21.9.1988.

5. If the english translation of the Award in Gujarati is correct then it reveals that Shri H.S.Mehta, Presiding Officer, Labour Court, Surendranagar is a confused Presiding Officer, who does not apply his mind to the material on record and is in the habit of repeating facts in the Award just to show that it is reasoned Award. Factual mistake in the Award that according to the version of the petitioner the respondent worked for 75 days from 21.8.1989 to 20.10.1987 itself is patent evidence to show how without looking to the record such absurd date was given in the Award even in Gujarati.

6. After putting great labour by going through the Award it can be said that factual findings though

presumptive seem to be based on evidence on record. The approach of the Presiding Officer has hardly been legal while appreciating the evidence. However, if the finding of fact is supported by material on record then in exercise of jurisdiction under Article 226 of the Constitution of India this Court will not set aside the Award. Uless the Award is found to be perverse or illegal or contrary to law interference in exercise of writ jurisdiction is hardly justified.

7. The first finding of fact was regarding Undertaking given by the respondent before the petitioner. The said Undertaking is Paper No.7/1. However, such undertaking from the employee and that too from daily-wager is really un-known in service jurispudance or under the Industrial Disputes Act. Normally such conditions could have been imposed by the employer in the order or letter of employment. The respondent has denied that he executed any such undertaking. His stand was that he is literate and puts his signature and not thumb impression. No attempt was made by the employer to place on record the service papers, salary sheets, etc. showing that the respondent used to give thumb impression at the time of receiving salary. There were contradictory statements of the two witnesses examined by the employer and those contradictions were taken into consideration by the Presiding Officer of the Labour Court. Significantly one such witness has stated that the thumb impression on the undertaking was taken from the respondent after he was dismissed from the service. Other oral evidence on the point was also considered by the Presiding Officer by mere repetition. From the statements of witnesses reproduced in the Award it is clear that so called undertaking was not proved in accordance with law. It is more surprising that the original undertaking was not brought on record and any statement in the absence of original undertaking was nothing but secondary evidence which is not admissible under the Evidence Act. Consequently firstly there was no admissible evidence to prove the Undertaking given by the respondent and secondly the undertaking was not filed nor proved in accordance with law. Consequently it could not be read in evidence. The said Undertaking, therefore, could not be the basis for justifying the action of the petitioner in dismissing the respondent from service.

8. The next point for consideration is whether the respondent was dismissed from service or whether he voluntarily stopped coming to attend his work. On this point there is no finding recorded by the Presiding

Officer of the Labour Court which again shows non-application of mind to the real and entire controversy between the parties. It does not appeal to reason that the respondent would have voluntarily stopped attending his duty for no obvious reason. It could be established by the petitioner from record that the respondent voluntarily stopped attending his duties. Since the best evidence was with the petitioner on the point and since it was not produced it can be said that the respondent did not stop attending the work voluntarily.

9. The third point of controversy is whether the respondent worked for 75 days only or for one year i.e. for a period exceeding 240 days. The findings of the Labour Judge are again presumptive. He has observed that there is no other alternative except to assume that the applicant has done continuous service of one year. Such assumption was also uncalled for. However, from the evidence reproduced in the body of Award it appears that except the statement of the respondent he could not have adduced documentary evidence to show that he worked continuously for one year. On the other hand it could have been established from the evidence on record by the petitioner that the respondent had worked for 75 days only. For that attempt was to examine one witness and also by filing statement of presence of the respondent. Original record on the point was again suppressed and was not brought before the Labour Court. The officer who tried to prove the statement of presence of the respondent was not the person who prepared such statement nor it was statement signed by the witness who tried to prove the same. Consequently the effort of the petitioner that the respondent worked from 21.7.1987 to 20.8.1987 for 14 days in the first instance and then from 21.8.1987 to 20.9.1987 only 31 days and from 21.9.1987 to 20.10.1987 for 30 days miserably failed. Further more it appears that the break of one day on two occasions was ornamental. The Deputy Executive Engineer who prepared the statement of presence was not examined as witness before the Labour Court. His successor had no personal knowledge and he had not seen the original file in which the statement of presence of the respondent was recorded. He admitted that he did not sign the record containing presence of the respondent. As such it can be concluded that the petitioner failed in establishing that the respondent worked only for 75 days. If the material document which was in possession of the petitioner was not produced before the Labour Court adverse inference can be drawn that if those documents would have been produced before the Labour Court they would not have

supported the defence version of the petitioner and if such adverse inference is drawn against the petitioner then the statement of the respondent inspires confidence. Consequently for the reasons given above it can be held that the petitioner failed to establish that the respondent served only for 75 days whereas the respondent succeeded in establishing that he worked for continuous period of one year.

10. The next point for consideration is whether the Government Resolution imposing ban on engagement of new daily-wager could be a ground for refusing to grant Award in favour of the respondent. The Government Resolution dated 17.10.1988 can not come to the rescue of the petitioner. The respondent was dismissed on 21.9.1987 i.e. prior to commencement of the Government resolution impossing restriction on recruitment of new daily-wagers. Moreover it was not a case of recruitment of new daily-wager. On the other hand the respondent was already recruitted before imposition of restriction and if termination was illegal there was no difficulty in reinstating the respondent. The request of the respondent made on 15.8.1988 to reinstate him in service was also prior to 17.10.1988 when restriction on new recruitment of daily-wagers came into force. That request was also not considered.

11. The law, however, cannot be circumvented on the strength of so called ban imposed by the Government on 17.10.1988. Even a daily-wager who completed continuous service of 240 days is entitled to the benefit u/s. 25(F) of the Industrial Disputes Act. Obviously no such benefit was given to the respondent under Section 25(F) of the Act. The order of termination whether oral or in writing is therefore violative of the provisions of Section 25(F) of the Industrial Disputes Act and as such direction of the Labour Court for reinstatement of the respondent cannot be said to be contrary to law.

12. Regarding backwages the Labour Court has awarded only 40 % backwages and that too with effect from 21.9.1988 and not from 21.9.1987 when the respondent was dismissed from service. This portion of the award on the facts and circumstances of the case does not require interference.

13. In the result there arises no occasion for setting aside the impugned order. The petition has therefore no merit and is bound to fail.

The petition is accordingly dismissed with no

order as to costs.

sd/-

Date : August 17, 1999 (D. C. Srivastava, J.)

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